

REMARKS/ARGUMENTS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested. Claims 1-26 are pending in the application. Claims 11-26 are allowed.

Claim 1 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kithil (US 5,602,734) in view of Eckert et al. (US 6,460,878 B2). This rejection is respectfully traversed. The M.P.E.P. sets forth the criteria for a rejection for obviousness under 35 U.S.C. §103 as follows:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

See, M.P.E.P. § 706.02(j) *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438

(Fed. Cir. 1991).

There is no suggestion or motivation in Kithil or Eckert et al. or in the knowledge of one of ordinary skill in the art to combine the reference teachings of Kithil and Eckert et al. as proposed in the rejection of claim 1. The Office Action states that it would be obvious to modify Kithil "in order to better support the airbag in the fully inflated position". There is, however, no teaching or suggestion in Kithil or Eckert to support this position. In fact, the background section of Eckert specifically

discusses the *undesirability* of the airbag design taught by Kithil at Col. 1, lines 21-35 as follows:

“U.S. Pat. No. 5,602,734 discloses a front-passenger airbag module arranged in the roof region, in front of the passenger. The airbag is designed so that it substantially simultaneously deploys from the top downward on the windscreen and in the direction of the passenger. In this case, the airbag can only protect the head and neck regions of the passenger during a frontal collision. In this regard, *the entire space available in front of the passenger for cushioning the impact is not used.* Furthermore, the expanding airbag can strike the passenger's head when the passenger sits too far forward. This blow can injure the passenger”. (emphasis added)

The explicit teachings of Eckert identify the structure of Kithil as being undesirable. Eckert thus teaches away from its being combined with Kithil. One having ordinary skill in the art would be lead away from combining Kithil with Eckert et al. because Eckert specifically discourages the use of the airbag design of Kithil for the above reasons. For this reason, the rejection of claim 1 as being obvious over Kithil in view of Eckert is improper and should be withdrawn.

Also, the obviousness rejection to claim 1 using Kithil and Eckert et al. only seems plausible using hindsight after having the benefit of the Applicants' disclosure. The use of the teachings of the present invention to find obviousness is impermissible.

The court must be ever alert not to read obviousness into an invention on the basis of applicant's own statements; that is, we must view the prior art without reading into that art applicant's teachings. The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant's disclosure, make the invention as a whole obvious.

In Re Spinnoble, 160 USPQ 237 at 243 (CCPA 1969) (emphasis in original).

Without the teachings of the present invention, one of ordinary skill in the art would not even consider combining the teachings of Kithil and Eckert et al. to attempt to arrive at the presently claimed invention. This is especially true since Eckert explicitly teaches away from a combination with Kithil. For this additional reason, the rejection of claim 1 as being obvious over Kithil in view of Eckert is improper and should be withdrawn.

Further, there is not a reasonable expectation of success in combining the teachings of Kithil with Eckert et al. Kithil discloses a reentrant notch 72 which is of a geometry that "tends to reduce the risk of injury to an infant in a rear-facing car seat, or other forwardly positioned passenger, since this passenger can fit within notch 72 between forward chamber 66 and rear chamber 70, and since the body of a forwardly positioned passenger, even if sufficiently far back as to be struck by rear chamber 70, can deflect rear chamber 70 upward, so as to reduce the impact on the passenger from the collision with the air bag 20." (See Col. 7, lines 54-61). If the bag of Kithil were modified to inflate against the front surface of the instrument panel, the passenger would not be able to fit within the notch 72, because the notch 72 would be covered by the instrument panel and dash. Therefore, the stated purpose in Kithil would be defeated if combined with the teachings of Eckert. For this further reason, the rejection of claim 1 as being obvious over Kithil in view of Eckert is improper and should be withdrawn. For the reasons set forth above, the rejection of claim 1 under 35 U.S.C. 103(a) fails to establish a prima facie case for obviousness and the rejection should be withdrawn.

Thus, in view of the above, claim 1 is allowable. Claims 2-10 depend from claim 1 and are therefore allowable as depending from an allowable claim and also for the specific features recited therein.

In view of the foregoing, it is respectfully requested that the amendment be entered and the application allowed.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew M. Shaheen', is written over a horizontal line.

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